

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LANDMARK VENTURES, INC.,

Plaintiff,

-against-

ATERNITY, INC.,

Defendant.
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LINDSAY, Magistrate Judge:

Before the court is plaintiff's application dated January 19, 2011 seeking permission to conduct the deposition of non party Albert Lussier, Senior Vice President and Technology of Bank of America. Defendant opposes the application on the grounds that (i) discovery is premature because issue has not been joined; (ii) an initial conference has not been scheduled in this case; (iii) by letter application dated January 10, 2011 to the district court, defendant seeks a pre-motion conference to file a motion to dismiss; and (iv) plaintiff has not articulated any exigency or compelling need to take the proposed nonparty deposition prior to an initial conference or the district court's determination on its proposed motion to dismiss.

Rule 26(d)(1) of the Federal Rules of Civil Procedure expressly provides that "[a] party may not seek discovery from any source before the parties have conferred as required by Rule 26(f)," subject to certain exceptions not applicable here. Fed. R. Civ. P. 26(d)(1); *see Molefi v. Oppenheimer Trust*, No. 03 CV 5631, 2007 WL 538547, at *4 (E.D.N.Y. Feb. 15, 2007) (stating same). In the instant matter, a Rule 26(f) conference has not yet been scheduled. Accordingly, plaintiff's application seeking discovery prior to the Rule 26(f) conference is denied.

Dated: Central Islip, New York
January 25, 2011

SO ORDERED:

_____/s_____
ARLENE R. LINDSAY
United States Magistrate Judge